Syllabus- Legislative and Administrative Processes
LAW 513A, Section 2
Professor Dawson

Course Time and Room:
Monday and Wednesday, 11:00-12:15, Room 108

Professor's Information:
Professor Edward Dawson
Office #240; email: edawson@siu.edu

Office Hours/ Availability:
My office hours are Monday through Wednesday from 2:30-4:00. During office hours, I will be available to take your questions unless I let you know in advance that I will be out on a particular day. You are welcome to come by during office hours to ask questions without making an appointment. You may also request an appointment outside office hours by sending me an email; I am generally in my office most days when I am not teaching class. 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 email regularly during business hours (9 am-5pm Mon. through Fri.); outside 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 governmental structure, legislative process, and sources of statutory interpretation. We then examine and apply different theories of statutory interpretation. The middle of the course examines different methods, sources, and guidelines for interpreting statutory texts, based on both intrinsic and extrinsic sources. The course concludes with an examination of the regulatory state: what administrative agencies are, how agencies make regulations by interpreting statutes, and how and when courts defer to agencies’ interpretation of statutes through rulemaking.
Learning Objectives:
By the end of the course, a student should have learned how to:

1. Understand the constitutional separation of powers and how it affects the enactment and interpretation of statutes;
2. Understand the basic process by which legislation is enacted, the components of legislation, and the difference between state and federal legislation;
3. Distinguish between common law and statutory law;
4. Analyze judicial opinions interpreting statutes and regulations to identify rules of interpretation;
5. Apply rules of interpretation learned from the cases to new/hypothetical factual contexts;
6. Know the difference between the three theories of statutory interpretation: textualism, intentionalism, and purposivism and understand how each theory directs judges to interpret statutes;
7. Use textual methods to interpret a statute as a whole, and by section, paragraph, sentence, and word;
8. Use a statute’s context within a body of statutes (a code) to interpret the statute;
9. Understand what linguistic canons are, and be able to apply them to new statutes;
10. Apply statutory canons as a group to identify which canons support a particular interpretation of a statute, and how to resolve conflicts between canons;
11. 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;
12. Use canons based on extrinsic sources of law to interpret a statute, including conflicting statutes, common law, and constitutional provisions;
13. Understand what administrative agencies are and do;
14. Distinguish between statutes and regulations;
15. Explain how administrative agencies translate statutory requirements into regulations;
16. Learn the rules courts use when deciding whether to defer to administrative agencies’ interpretations of statutes;
17. Apply the rules of regulatory deference as learned from the cases to new/hypothetical factual contexts.

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

Reading:
For each class, I expect you to do the assigned reading, as listed below on the weekly schedule. “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. In class, I will ask you questions about the reading in class according to the call policy described below.
I recommend that you “brief” the cases assigned in the Jellum 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. I also have supplemental readings for certain classes; those supplemental readings will be posted on TWEN as noted on the weekly schedule below. That reading is fair game for call in class.

**Class Attendance:**

I will take attendance each class by passing around a roll sheet, which you will sign. You are allowed four absences for this course. Being significantly late to class counts as an absence. “Noting out” counts as an absence. As described in the call policy in the next section, being unprepared in class can count as an absence.

Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. If you maximize your absences, it can affect your participation grade. If you are at or near the absence limit but feel that extraordinary circumstances account for your absences, you can see me and explain. You are responsible for keeping track of your own absences. If you accumulate more than four absences, you may receive a lowered grade, or not receive credit for the course at all, as required by the school’s attendance policy, which is available here:


It explains, among other things, the penalties for exceeding the absence limit, which can include a grade reduction or withdrawal from the course.

**Call and Attentiveness Policy:**

I will call on students using a random call list—once you have been called on you won’t be eligible to be called on again until I have been through the entire list, at which point I will generate a new, random list. When called on, 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. You should also (but not exclusively) be prepared to answer any of the “points for discussion” or “hypothetical questions” posed in the textbook reading for that class.

You may “note out” before class by giving me a note or telling me that you are not prepared to be on call; noting out counts as an absence. If I call on you and you are unprepared or have not done the reading, I will mark you as absent for that class, the absence will count towards the limit for the semester, and you will remain on the call list. Being unprepared when called upon will also affect your class participation grade, as explained in the grading section below. So, the advantage of noting out is that it will not affect your grade in the course, unlike being called on and not being prepared.

If I observe that you appear to be using a computer or phone during class for non-class activities, I will warn you once by email and after that may deduct from your participation score. If I observe that whatever you are doing on your computer or other device is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer or other device during class.
Recording Policy:
Classes will be recorded; the recordings will be available by request. To access a recording of a class, email me the request and I will authorize IT to send you the link. Watching a recording of a class does not count to satisfy an absence unless necessary to accommodate a disability or unless you request and receive my approval.

Assignments and Problems:
The weekly schedule lists a number of assignments, most of which are taken from or based on problems in the text. Some require you to complete an assignment before class and turn it in at the beginning of class. If you prefer to submit these electronically, you must submit the assignment before class starts in order to get credit. Before the first assignment is due I will explain how you should electronically submit an assignment. Other assignments require you to prepare (i.e., read and think about) a problem as the basis for an in-class exercise; you will receive credit for these by completing the in-class exercise and turning it in at the end of class. Each of these assignments will counts towards your class participation grade, as described below under “Grades.” Any assignment you submit, whether before or during class, must have your name and the date on the document in order for you to receive credit for it.

Grades:
Your grade will be determined by a combination of your performance on a midterm, your performance on the final exam, and your class participation. The midterm will count for 20% of your grade, the final for 60%, and class participation will count for 20%. Grades for the course will be assigned based on the law school grading policy, which is available at:


The midterm will be on Tuesday, March 6th at 10:00—unless you have an accommodation, in which case your exam will begin at 9:30. It will consist of one short essay and several multiple-choice questions. It will be a closed-book exam. I will provide you individual feedback on your essay answers as well as an opportunity to meet with me to discuss your answer.

The final exam will be on Monday, May 7, at 1:15-4:15 PM. It will be a mixture of multiple choice questions and essay/ short essay questions. The final exam will be a closed-book exam. The final exam will be cumulative, that is, it will cover material from the entire semester.

Your participation score will be assessed based on your completion of the assignments as listed on the weekly schedule below, performance on call, and your participation in class discussion and group exercises.

There are 15 assignments on the weekly schedule. You will get 1 point for completing each of them. Some require you to complete an assignment before class and turn it in at the beginning of class. (If you submit these electronically, you must submit the assignment before class starts in order to get credit.) Others require you to prepare a problem as the basis for an in-class exercise; you receive credit for these by completing the in-class exercise. Any assignment you submit, whether before or during class, must have your name and the date on it in order for you to receive credit for it. (For emailed assignments, your name must be in the document itself.) For these assignments, you do not have to get all of the answers right to get credit; my standard for credit will be whether your submission
demonstrates that you read the assigned material and made a sincere effort to answer the questions posed. If your answers demonstrate that you did not understand the material, I may ask you to revise and resubmit in order to get credit.

The remaining 5 participation points will be based on how attentive you are in class, how you perform when called on in class, and your degree of effort when we discuss problems or conduct group exercises in class. If you are unprepared when called on you will, in addition to being marked absent for the day, lose two points from your participation grade.

If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then. If you are absent and unable to turn in or complete in class one of the assignments listed on the weekly schedule, you may be allowed to turn it in for credit outside of class if you notify me and request permission in advance of the class that you miss.

You do not have to volunteer to speak or ask questions outside of class to get full points for participation; you do have to complete the assignments, be prepared when you are called on, and participate in or complete during class the exercises we will use to build understanding of the material.

**Workload Expectations:**

The American Bar Association standards for accrediting law schools define “a “credit hour” as an amount of work that reasonably approximates: (1) 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, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

**Plagiarism and Collaboration**

You are welcome to collaborate in preparing for class, in working on the assignments that are due for certain classes as noted on the weekly schedule, and in discussing and giving answers to any group exercises we may do in class. Collaboration means working together to answer questions, or comparing one’s own answers against another student’s answers. It is not ok for one student to copy another student’s answers for an assignment or for students to divide up an assignment and copy each other’s answers to the other parts. Doing either of those things would be considered by me to be an honor code violation by both the copier and by the person whose answers were copied.

The exams in this class are closed-book and no outside sources or collaboration with other students are allowed.

**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 weekly schedule below. I will also use TWEN to send messages to the class, including
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.

**Course Assistants:**

I will have one or 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 during the first week of class provide you with their contact information and availability.
Weekly Schedule

The schedule below lists the assigned reading, as well as any assignments, for each class session. “Jellum” refers to the case book. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course. I may adjust the assignments may change depending on how fast we move through the material; I will give you advance notice of changes and update the syllabus as we go. I may also assign additional reading or distribute problems to be worked in advance of class. If I do I will give you advance notice in class and post the material on TWEN in advance of the day for which it is assigned. 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. 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 January 15, which is Martin Luther King, Jr., Day, and during Spring Break (March 12 and 14). We will have a “video lecture,” as noted on the syllabus, to make up the missed day for MLK, Jr. Day.

I. Introduction to Course and Course Themes

Introduction to the course and course procedures. Overview of the course themes of legislative process, statutory interpretation, and the “regulatory state.”

1. Wednesday, January 17, 2018
   Topic: Introduction to Course; Introduction to Statutory Interpretation
   Reading:
   • Syllabus
   • Jellum pp. 3-19

II. Government Structure, Legislative Processes, and Theories of Statutory Interpretation

2. Monday, January 22, 2018
   Topic: Separation of Powers
   Reading:
   • Jellum pp. 19-47

3. Wednesday, January 24, 2018
   Topics: Legislative Processes
   Reading:
   • Jellum pp. 51-71

4. Monday, January 29, 2018
   Topics: Theories of Statutory Interpretation, pt. 1 – Textualism and Intentionalism
   Reading:
   • FJ pp. 83-110
5. Wednesday, January 31, 2018
Topic: Theories of Statutory Interpretation pt. 2—Purposivism; Theories exercise
Reading:
• Jellum pp. 111-137
Assignment #1:
• Complete, and submit by the beginning of class, an assignment based on the “Speluncean Explorers” problem. The problem and assignment will be posted on TWEN. (If you want to read the full/ classic/ longer version of the problem, it is at Jellum pp. 137-148, but you do not need to and are not required to read that version to complete the assignment.)

III. Statutory Interpretation—Intrinsic Sources

6. Monday, February 5, 2018
Topics: Textual interpretation; plain and technical meaning; sources of word meaning
Reading:
• Jellum pp. 149-74, 178-180
Assignment #2: Prepare problem 5, at pp. 178-80. We will complete an in-class exercise based on this problem

7. Wednesday, February 6, 2018
Topics: Ambiguity and Absurdity
Reading:
• Jellum pp. 181-192, 195-210
Assignment #3: Prepare, and submit by the beginning of class, answers to the questions on problem 6A at pp. 208-210. The questions are on page 210.

8. Monday, February 12, 2018
Topics: Scrivener’s Error and Constitutional Avoidance; Punctuation
Reading:
• Jellum pp. 210-233
Assignment #4: Prepare problem 6B at pp. 223-226. We will have an in-class exercise based on the problem. You do not need to draft a memo, as the problem instructs, but you should think about and be able to answer the questions posed at the bottom of the text on p. 226.

9. Wednesday, February 14, 2018
Topics: Punctuation (cont’d) and Grammar; Linguistic Canons pt. 1
Reading:
• Jellum pp. 233-247, 251-263
Assignment #5:
• Prepare and submit by the beginning of class answers to the questions about problem 7 on page 252
10. Monday, February 19, 2018
Topic: Linguistic canons, pt. 2.
Reading:
• Jellum pp. 263-288

11. Wednesday, February 21, 2018
Topics: Linguistic canons, pt. 3
Reading:
• Jellum pp. 288-307
Assignment #6: Prepare, and submit by the beginning of class, answers to the questions on pp. 306-07 about Problem 8

12. Monday, February 26, 2018
Topics: Components
Reading:
• Jellum pp. 309-341
Assignment #7: Complete, submit by the beginning of class, an exercise on statutory components, to be posted on TWEN

13. Wednesday, February 28, 2018
Topic: Catch up and Midterm Review
Reading:
• Jellum pp. 368-371 (problem 9)
Assignment #8: Come prepared to use problem 9 as a practice/ model essay question in preparation for the midterm exam

14. Tuesday, March 6, 2018

MIDTERM EXAM

SPRING BREAK= March 10-March 18

15. Makeup Lecture

I will post over the break a makeup video lecture that covers the rest of the casebook material on components, at Jellum pp. 342-368. You will not need to brief the cases covered in that reading, but you will be responsible for knowing the rules as I cover them in the video lecture. Material from this lecture may be tested on the final.
IV. Statutory Interpretation: Extrinsic Sources

16. Monday, March 19, 2018
Topic: Conflicts between Statutes
Reading:
  • Jellum pp. 373-395
Assignment #9: Review and prepare problem 10A at pp. 393-395. We will use the problem for an in-class exercise; be prepared to make arguments for both the criminal defendant (Tom) and the prosecution. Do not attempt to “draft a trial brief” as the textbook instructs.

17. Wednesday, March 21, 2018
Topic: Enactment Context (Legislative History)
Reading:
  • Jellum pp. 409-410, 412-420, 427-44

18. Monday, March 26, 2018
Topic: Purpose; Post-Enactment Context
Reading:
  • Jellum pp. 451-476
Assignment #10: Prepare problem 12 at pp. 463-465. We will have an in class exercise based on the problem.

19. Wednesday, March 28, 2018
Topic: Post-Enactment Context (cont’d)
Reading:
  • Jellum pp. 467-487, 491-95
Assignment #11: Prepare, and submit by the beginning of class, answers to questions on problem 13 (pp. 493-95). I will post the questions I want you to answer on TWEN in advance of class.

20. Monday April 2, 2018
Topic: Policy-Based Canons--Constitutional
Reading:
  • Jellum pp. 497-512, 521-533

21. Wednesday April 4, 2018
Topics: Policy Based Canons—Constitutional (cont’d) and Prudential
Reading: Jellum pp. 533-538, 541-558
Assignment #12: I will post on TWEN a problem which we will use as a group exercise in class; you will get credit for the assignment by participating in the group exercise.

V. Agencies and Regulation

22. Monday, April 9, 2018
Topic: Introduction to Agencies and Regulation
Reading: Jellum pp. 561-592
23. Wednesday, April 11, 2018  
Topic: Oversight of Agencies  
Reading: Jellum pp. 593-620

24. Monday, April 15, 2018  
Topic: Agency Deference – The *Chevron* Doctrine  
Reading: Jellum pp. 633-648, 657-660  
Assignment #13: Prepare, and submit by the beginning of class a set of questions, which I will post on TWEN, about problem 18B at pp. 657-660 of the Jellum book

25. Wednesday, April 18, 2018  
Topic: Application and Evolution of *Chevron* deference: *Chevron* “step zero”  
Reading:  
• Jellum pp. 661-688

26. Monday, April 23, 2018  
Topic: *Chevron* cont’d, review on agency deference  
Reading:  
• Jellum pp. 690-705, 446-450 (problem 11)  
• Excerpt from *Arlington v. FCC*, to be posted on TWEN  
Assignment #14: Create a study tool such as a “flow chart,” attack plan, or list of questions to use when analyzing a *Chevron* problem. Then take that tool and apply it to problem 11 at pp. 446-450 (disregard the textbook’s instruction to prepare a brief; instead, use your tool to lay out the outline of an answer to an essay question that asked you whether a court should uphold the suit filed by the NPA.). Submit by the beginning of class a document that includes your study tool and the results of applying it to problem 11.

27. Wednesday, April 25, 2018  
Topic: Semester Review  
Reading: Jellum pp. 707-718  
Assignment #15: Submit by the beginning of class a list of questions (at least three) you have about the course material or about the exam. If you have no questions, then you can submit instead an outline of topics from the course that is at least a page and no more than 3 pages long.

28. Review session-TBA

We will have an additional review session in which I answer the questions you submit on the 25th. It may be live, or it may be by video; I will let you know towards the end of the semester which it will be.
**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.